a certificate of non-appearance was issued. A summons for judgment was issued. The Judge in chambers ordered that the matter be adjourned to Open Court for oral evidence on damages to be taken. On 6th February, 1958, the trial Judge heard evidence regarding damage and reserved his judgment. On 7th February, 1958, the defendant appointed a solicitor and took out a summons for leave to enter an appearance out of time and to defend the action.

The defendant's affidavit discloses a *prima facie* defence and the application has been resisted by the plaintiff on the ground that he has a vested interest in the judgment which cannot now be upset. He relies on the case of *Manickam v. Tremelbye.* [1] That was a case which turned on the interpretation of section 531 of the F.M.S. Civil Procedure Code and laid down the principle that an application for leave to appeal out of time can only be granted if "special circumstances render an extension just." The reason disclosed by the defendant in this case for his failure to take any proceedings is that he considered the suit affected the owner of the car and not himself. The defendant has not been cross-examined on his affidavit and I am therefore obliged to accept it at its face value. I agree that these are not "special circumstances" within the meaning of *Manickam v. Tremelbye,* but I consider that *Manickam v. Tremelbye* which is based on *In re Helsby* [2] has no application to the present case. O.27 r.15 gives a completely unfettered discretion to a Court to set aside a judgment by default. No time limits of any kind are prescribed.

The principles upon which the Court should act under O.27 r.15 appear to me to have been quite clearly laid down by Lord Atkin in *Evans v. Bartlam,* [3] at page 480:—

"The Courts, however, have laid down for themselves rules to guide them in the normal exercise of their discretion. One is that where the judgment was obtained regularly there must be an affidavit of merits, meaning that the applicant must produce to the Court evidence that he has a *prima facie* defence. It was suggested in argument that there is another rule that the applicant must satisfy the Court that there is a reasonable explanation why judgment was allowed to go by default, such as mistake, accident, fraud or the like. I do not think that any such rule exists, though obviously the reason, if any, for allowing judgment and thereafter applying to set it aside is one of the matters to which the Court will have regard in exercising its discretion. If there were a rigid rule that no one could have a default judgment set aside who knew at the time and intended that there should be a judgment signed, the two rules would be deprived of most of their efficacy. The principle obviously is that unless and until the Court has pronounced a judgment upon the merits or by consent, it is to have the power to revoke the expression of its coercive power where that has only been obtained by a failure to follow any of the rules of procedure."

Applying those principles to this present case, since there is no evidence before me which goes to show that the defendant is insincere in his application, I consider that he has disclosed a *prima facie* defence and he has given a reasonable explanation why he took no steps. I therefore give leave to the defendant to appear and defend. Appearance is to be entered forthwith and the time for filing the defence will commence to run from this day. This leave to appear and defend is subject to the condition that the defendant either do deposit in Court within fourteen days from this day the sum of $1,250 as security for the plaintiff's costs of this action or do give security for such sum to the satisfaction of the plaintiff or the Registrar.

Order accordingly.

Solicitors: *T. C. Tang; Lovelace & Hastings.*

ONG CHONG HIN v. REG.

[A. Cr. J. (Rose C.J.) March 11, 1959]

[Singapore — Magistrate's Appeal No. 29 of 1959]

Dangerous Drugs — "Possession" of opium needle — Whether fiddling amounts to possession — Evidence.

In the absence of any evidence that accused was smoking opium the mere fact of his proximity with articles used for smoking opium does not constitute sufficient evidence of possession to justify a conviction.

MAGISTRATE'S APPEAL.

S. H. D. Elias for the appellant.

Peter Lee (Crown Counsel) for the respondent.

Rose C.J.: The appellant was charged with being in possession of certain utensils, to wit an opium needle, an opium lamp and an opium pipe which were to be used in connection with the smoking of prepared opium.

It is common ground that the appellant was neither the owner nor the tenant of the hut in which these articles were found. The appellant's own contention was that he was in the hut for an innocent purpose, namely, to meet and discuss a business matter with his taikong.

Be that as it may — and the learned Magistrate rejected the story — the question to be decided is whether there was sufficient evidence of possession within the meaning of the Dangerous Drugs Ordinance.

No opium or residue of opium was found in the pipe or anywhere in the hut and therefore no presumption arises under section 37 of the Ordinance.

Although the appellant had the opium needle in his hand — the appellant's position was that he was merely fiddling with it — it seems to me that in the absence of any evidence that he was smoking opium (or indeed that there was no opium which he could have smoked) that the mere fact of the appellant's proximity to these articles, in somebody else's hut does not constitute sufficient evidence of possession to justify a conviction.

For these reasons the appeal must be allowed and the conviction and sentence quashed.

Appeal allowed.

Solicitors: *Elias Bros.*

N.V. KONINKLIJKE PAKETVAART MAATSCHAPPIJ (ROYAL PACKET NAVIGATION CO. LTD.) v. YEE CHANG & CO. LTD.

[C.A. (Tan Ah Tah, Chua and Wee Chong Jin JJ.) February 4, 1959]

[Singapore — Civil Appeal No. 20 of 1958]

Practice and Procedure — Compromise in existing and pending action — Enforcement of terms of compromise — Jurisdiction.

Where there is a compromise in an existing suit, the terms of that compromise can be enforced by a separate order in the suit, without commencing another action to enforce the terms of the compromise.

This was an appeal from a judgment of Whyatt C.J. [(1958) M.L.J. 131] on a motion in which he held that the respondents were entitled to recover from the appellants a sum of $5,379.21 together with costs of an application for judgment based on an agreement for compromise made out of Court in a pending action. The agreement was not brought to Court until the motion for judgment was filed. The Court of Appeal held that the procedure adopted by the respondents was correct and that the Court below had jurisdiction to make the order against which the appeal had been brought.

Cases referred to:—

(1) *Graves v. Graves* (1893) 69 L.T. 420 affirmed by C.A. in 28 L.J. Notes of Cases 558.
(2) *Green v. Rozen* (1955) 2 All E.R. 797.
(3) *Eden v. Naish* (1878) 7 Ch.D. 781.
(4) *Hakes v. Hodgkins* (1877) unreported.
(5) *Scully v. Dundonald* (1878) 8 Ch.D. 658.

COURT OF APPEAL, appeal from the decision of Whyatt C.J. (1958) M.L.J. 131.

R. H. Green for the appellants/defendants.

G. S. Hill for the respondents/plaintiffs.

Cur. Adv. Vult.

The judgment of the Court of Appeal was delivered by :

Tan Ah Tah J.: This was an appeal from a judgment of Whyatt C.J. on a motion in which he held that the plaintiffs were entitled to recover from the defendants the sum of $5,379.21 together with the costs of the motion.

The motion was filed in the following circumstances. By their statement of claim the plaintiffs claimed from the defendants the sum of $11,953.80 as damages for breach of contract in and about the carriage of bales of rubber by sea. The defence delivered by the defendants contained a total denial of liability. Subsequently, correspondence ensued between the defendants' solicitors and the plaintiffs' solicitors in an endeavour to arrive at a settlement. On the 28th March, 1958 the defendants' solicitors wrote a letter to the plaintiffs' solicitors the last paragraph of which reads as follows:—

"In an effort to settle this matter we have obtained instructions to offer you 45% of your clients' claim, each side to pay its own costs, that is to say, 45% of the sum of $11,953.80."

On the 2nd May, 1958 the plaintiffs' solicitors replied to the defendants' solicitors as follows:—

"We —— now have our clients' instructions to accept your clients' offer of 45% of our clients' claim, each side to pay its own costs, that is to say 45% of the sum of $11,953.80. We should be obliged if you would let us have your cheque for this sum at your earliest convenience."

It is clear from the terms of these two letters that, on the 2nd May, 1958, the solicitors for the parties, acting on their clients' instructions, reached a clear-cut agreement whereby the defendants were to settle the claim by payment of 45% of $11,953.80, that is to say, the sum of $5,379.21.

However, on the 7th May, 1958, in spite of what had happened, the defendants' solicitors wrote to the plaintiffs' solicitors to the effect that according to the defendants' records the claim of $11,953.80 was not correct and that the amount to be paid by way of settlement of the claim should be 45% of $7,446.40 and not 45% of $11,953.80. Further correspondence thereupon passed between the two firms of solicitors; during this exchange of letters the plaintiffs' solicitors took the stand that they were not prepared to agree to any alteration in the agree-